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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Implementation of the Non-Accounting
Safeguards of Sections 271 and 272 of the
Communications Act of 1934, as amended

CC Docket No. 96-149

FURTHER REPLY COMMENTS

Teleport Communications Group Inc. ("TCG") hereby submits its Reply
Comments in response to the Commission's Further Notice of Proposed
Rulemaking ("FNPRM") in the captioned proceeding.

A number of parties have concurred with TCG's position that reporting
requirements adopted in this proceeding must provide data related to service
intervals for the provisioning of telephone exchange service, in addition to
exchange access. Those parties opposing such a requirement fail to explain how
their conclusion is consistent with the plain language of Section 272(e)(1), which
provides that both telephone exchange and exchange access service must be
provided by the RBOC to non-affiliated entities within a period of time that is no
longer than that in which such service is provided to the RBOC or its affiliate.^{1/}
To abide by the plain language of the statute and allow unaffiliated entities the
only objective way to measure whether RBOCs are meeting their statutory

^{1/} See 47 U.S.C. § 272(e)(1).

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requirements, it is essential that RBOC activity with regard to the provisioning of telephone exchange services be monitored through disaggregated, quarterly reports.

Clearly, the plain language of the statute requires that the reporting requirements imposed include categories related to telephone exchange service.^{2/} Moreover, the intent of sections 271 and 272 is to help eliminate the opportunity for discriminatory treatment, which could affect carriers providing either telephone exchange service or exchange access. As AT&T correctly observed, "[a] BOC could use the discriminatory provision of local exchange services and facilities as a way to impede interLATA competition by carriers that seek to provide packages of local and long distance services."^{3/} Consistent with this finding, Sprint has also proposed that RBOCs be required to report service category results for resold services and unbundled network elements.^{4/} If the purpose of Section 272(e)(1) — nondiscriminatory treatment of non-affiliated entities with respect to service requests — is to be satisfied, then the reporting requirements must cover more than a few broad categories related to exchange access. Service intervals for telephone exchange access categories must be included.

However, Ameritech claims that TCG's proposal should not be considered and that "this docket is limited to requirements necessary to implement the

^{2/} See AT&T at 11-12; MCI at 4.

^{3/} AT&T at 13.

^{4/} Sprint at 2-3.

exchange access service interval requirements of Section 272(e)(1)."^{5/} Based on the plain language of Section 272(e)(1), this simply is untrue. The phrase "telephone exchange service and exchange access" cannot be read to mean only exchange access. Such a practice would be wholly contrary to statutory construction and would fail to provide non-affiliated entities with the protection from discriminatory provisioning of services that Congress saw fit to enact. The combined reporting formats proposed by TCG and AT&T provide the only practical way for competing parties to monitor whether the provision of such services meets the nondiscriminatory standard set forth in Section 272(e)(1). Significantly, these parties are dependent on the RBOCs for providing telephone exchange service and exchange access.

Moreover, these reporting requirements will not serve their purpose unless they provide information on a disaggregated basis. The reporting requirements will not fulfill their intended purpose of ensuring compliance with the nondiscrimination requirement unless the information is kept separately for the RBOC and any affiliates. TCG disagrees with Pacific Telesis that such reports will be costly to produce or will provide "competitively sensitive marketing intelligence."^{6/} First, assuming that Pacific Telesis is correct in its claim that much of the information is available in other sources, such information also could be entered into the required reports. Second, TCG disagrees that sensitive marketing information would be

^{5/} Ameritech at 2; see also Pacific Telesis at 14.

^{6/} See Pacific Telesis at 14.

revealed with respect to the RBOC affiliate. TCG's reports require only that information necessary to compare whether non-discriminatory service intervals is available to both affiliated and non-affiliated entities.

Other RBOCs also object to providing service interval data on a disaggregated basis.^{7/} Ameritech erroneously claims that information on an averaged basis will provide sufficient indication of whether non-affiliated entities are receiving inferior service. However, as TCG has stated, averaging the service intervals for the RBOCs and their affiliates will skew results to mask discriminatory treatment.^{8/} As AT&T explains, by providing this information on a consolidated basis, the RBOC could place its most profitable customers with the affiliate, which would receive superior service, and retain captive customers with the RBOC. If the RBOC is permitted to average the service intervals among itself and its affiliates, it can disguise the fact that an affiliate is receiving service superior to a competing, unaffiliated entity. As long as the unaffiliated entity receives service equal to the average, no violation will be apparent, and the affiliate would receive a competitive advantage that is undetectable in the reports. Such reports would be useless. Therefore, the service interval and provisioning reports must be provided on a disaggregated basis.

Section 272(e)(1) requires the nondiscriminatory provisioning of telephone exchange service and exchange access to unaffiliated entities by an RBOC or its

^{7/} See Ameritech at 12-14; BellSouth at 4-5; SBC at 8-9.

^{8/} See also AT&T at 18-20; Sprint at 2-3.

affiliates. Therefore, TCG urges the Commission to adopt in full TCG's reporting proposal, which would be used in conjunction with the AT&T proposed report format. The information for both reports should be made available on a disaggregated, exchange area basis so that interested parties can analyze the information provided and bring any allegations of discriminatory behavior to the Commission's attention.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Teresa Marrero", is written over a horizontal line.

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